

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS LEOUTSAKOS

Appeal No. 2003-1851
Application No. 09/556,157



ON BRIEF

Before OWENS, DELMENDO, and JEFFREY T. SMITH, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1-35, which are all of the claims in the application.

THE INVENTION

The appellant claims an apparatus and a method for supporting and moving a body part, such as a body part of a person who is elderly or disabled. Claims 1, 11, 16, 21 and 31 are illustrative:

1. Apparatus for supporting a body part, comprising: a rest member for said body part;

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Appeal No. 2003-1851
Application No. 09/556,157

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(1026) an expandable member associated with said rest member; and means for expanding said expandable member upwardly and forwardly with said body part on said rest member.

111-15 11. The method of supporting a body part for transfer, comprising the steps of: *(rest member is platform non-inflatable)*
1661 12-12 (a) positioning said body part on a rest member;
6b, 10-11 1120 (b) expanding said rest member to an inclined elevation with said body part supported thereon; and
(c) transferring said body part from said rest member.

6b, 17-20 16. The method of fabricating apparatus for supporting a body part comprising the steps of: *103 w/ cushion or suspension*
(a) providing a pivotal platform configured to said body part; and
(b) associating an expandable member with said platform.

21. A system for assisting a person having a lower limb into adopting a reclined position from a sitting position, comprising a surface upon which a person is to recline; and means for transferring the person to said surface, comprising means for elevating a lower limb of said person to a level permitting the transfer of said person to said surface with said lower limb in a reclined position.

31. A method for assisting seated persons into adopting a reclined position on an elevated surface comprising the steps of:
(a) Positioning a seated person's lower limb on means for elevating said lower limb;
(b) Elevating said lower limb with said person remaining seated; and
(c) Transferring said elevated lower limb to said elevated surface.

THE REFERENCE

Garman

5,651,149

Jul. 29, 1997

Appeal No. 2003-1851
Application No. 09/556,157

THE REJECTION

Claims 1-35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Garman.

OPINION

We reverse the aforementioned rejection. We need to address only the independent claims, i.e., claims 1, 11, 16, 21 and 31.

"Anticipation requires that every limitation of the claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference." *Corning Glass Works v. Sumitomo Electric*, 868 F.2d 1251, 1255-56, 9 USPQ2d 1962, 1965 (Fed. Cir. 1989).

Claim 1

The appellant's claim 1 requires means for expanding an expandable member upwardly and forwardly.

The examiner argues that Garman's cushion panel 61 corresponds to the appellant's expandable member (final rejection, page 2; answer, page 4). The cushion panel, however, is not expandable. Instead, it is pivotable from a hanging position to a horizontal position when pushed against by expanding supporting device 60 (col. 7, lines 6-14; figure 9A).¹

¹ The examiner has not established that Garman's supporting device 60 is expandable upwardly and forwardly.

Appeal No. 2003-1851
Application No. 09/556,157

The examiner, therefore, has not carried the burden of establishing a *prima facie* case of anticipation of the invention claimed in the appellant's claim 1 and the claims which depend therefrom.

Claim 11

The appellant's claim 11 requires the step of expanding a rest member to an inclined elevation.

The examiner argues that Garman's "expandable member clearly assumes various degrees of inclination as it is elevated" (answer, page 4). As discussed above regarding claim 1, however, Garman's cushion panel 61, which the examiner relies upon as corresponding to the appellant's expandable member, is not expandable. Hence, the examiner has not established a *prima facie* case of anticipation of the invention claimed in the appellant's claim 11 and the claims which depend therefrom.

Claim 16

The appellant's claim 16 requires a pivotal platform configured to a body part.

The examiner argues that because the appellant's claim 16 claims an apparatus for supporting a body part and does not specify the body part, the fact that Garman's body part rest member is completely flat is irrelevant (answer, page 6). The

appellant's claim 16 is open to the pivotal platform being configured to any body part, but it must be configured to some body part. The examiner has not established that Garman discloses a pivotal platform having such a configuration. Consequently, the examiner has not established a *prima facie* case of anticipation of the invention claimed in the appellant's claim 16 and the claims which depend therefrom.

Claims 21 and 31

The appellant's claim 21 requires a means for elevating a lower limb of a person to a level permitting the transfer of the person, with the lower limb in a reclined position, to a surface upon which the person is to recline, and claim 31 requires means for elevating a lower limb.

The examiner argues that "Garman '086 discloses the method step of 'transferring the elevated body part or lower limb from the rest member' to the elevated surface upon which a person is to recline (see Figures 1, 2, 5-9, & 9A; column 5, lines 42-50; and column 7, lines 5-19)" (final rejection, page 2).² To meet the appellant's means plus function limitations, the reference

² In this argument the examiner erroneously refers to the applied reference as Garman '086. It is clear that the examiner's citations are not to Garman '086 (U.S. patent no. 5,669,086) but, rather, are to the Garman patent cited in the statement of the rejection.

Appeal No. 2003-1851
Application No. 09/556,157

must disclose a means which performs the same function in substantially the same way to produce substantially the same result as a means disclosed in the appellant's specification.

See *Odetics Inc. v. Storage Technology Corp.*, 185 F.3d 1259, 1267, 51 USPQ2d 1225, 1230 (Fed. Cir. 1999). The appellant's disclosed means for elevating is expandable bellows or scissors which act upon rest surface 13 (specification, pages 7-9). The examiner has not established that Garman discloses a means for elevating which performs the same function in substantially the same way to produce substantially the same result as the means disclosed by the appellant. Accordingly, the examiner has not established a *prima facie* case of anticipation of the invention claimed in the appellant's claims 21, 31, and their dependent claims.

Appeal No. 2003-1851
Application No. 09/556,157

DECISION

The rejection of claims 1-35 under 35 U.S.C. § 102(b) over
Garman is reversed.

REVERSED

Terry J. Owens)
Terry J. Owens)
Administrative Patent Judge)
Romulo H. Delmendo)
Romulo H. Delmendo)
Administrative Patent Judge) BOARD OF PATENT
Jeffrey T. Smith)
Jeffrey T. Smith) APPEALS AND
Administrative Patent Judge) INTERFERENCES

ROUTING FOR DECISIONS OF BOARD OF APPEAL

	Initials	Date
QAS	<u>MB</u>	<u>11/14/03</u>
Director	<u>DM</u>	<u>11/17/03</u>
SPE	<u>JD</u>	<u>11/18/03</u>
Examiner		
Disposal Recorded by LIE		

Date of Decision	Serial Number	Examiner	Art Unit	Affirmed	Reversed
<u>11/05/03</u>	<u>09/556,157</u>	<u>Santos</u>	<u>3673</u>	<input type="checkbox"/> 101 <input checked="" type="checkbox"/> 102 <input type="checkbox"/> 103 <input type="checkbox"/> 112 <input type="checkbox"/> other	<input checked="" type="checkbox"/> 101 <input type="checkbox"/> 102 <input type="checkbox"/> 103 <input type="checkbox"/> 112 <input type="checkbox"/> other

****DUE DATE: Dec. 14, 2003

Comments:

Ex. has not established a prima facie case of
anticipation of the ^{claimed} invention.

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Appeal No. 2003-1851
Application No. 09/556,157

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